

1 STEVEN H. GURNEE, ESQ. SB# 66056  
 2 DAVID M. DANIELS, ESQ. SB# 170315  
 3 GURNEE & DANIELS LLP  
 4 2240 Douglas Boulevard, Suite 150  
 5 Roseville, CA 95661-3805  
 6 Telephone (916) 797-3100  
 7 Facsimile (916) 797-3131

8  
 9 Attorneys for Defendants  
 10

11  
 12 ALDERWOODS GROUP, INC., PAUL A.  
 13 HOUSTON, SERVICE CORPORATION  
 14 INTERNATIONAL, SCI FUNERAL AND  
 15 CEMETERY PURCHASING COOPERATIVE, INC.,  
 16 SCI EASTERN MARKET SUPPORT CENTER, L.P.,  
 17 SCI WESTERN MARKET SUPPORT CENTER, L.P.  
 18 a/k/a SCI WESTERN MARKET SUPPORT CENTER, L.P.

19  
 20  
 21 UNITED STATES DISTRICT COURT  
 22  
 23 NORTHERN DISTRICT OF CALIFORNIA  
 24

25 CLAUDE BRYANT, CRAIG FULCHER, ) No. 3:07-CV-5696-SI  
 26 SANFORD LEVINE and THOMAS )  
 27 THOMPSON et al., on behalf of themselves ) DECLARATION OF STEVEN H.  
 28 and all other employees and former employees ) GURNEE IN SUPPORT OF MOTION TO  
 1 similarly situated, ) DISMISS AMENDED COMPLAINT  
 2 Plaintiffs, ) PURSUANT TO FRCP 12(B)(2) AND  
 3 vs. ) FRCP 12(B)(6)  
 4 ) DATE: MAY 9, 2008  
 5 ALDERWOODS GROUP, INC., PAUL A. ) TIME: 9:00 A.M.  
 6 HOUSTON, SERVICE CORPORATION ) DEPT.: 10  
 7 INTERNATIONAL, SCI FUNERAL AND )  
 8 CEMETERY PURCHASING )  
 9 COOPERATIVE, INC., SCI EASTERN )  
 10 MARKET SUPPORT CENTER, L.P. SCI )  
 11 WESTERN MARKET SUPPORT CENTER, )  
 12 L.P. a/k/a SCI WESTERN MARKET )  
 13 SUPPORT CENTER, INC., SCI HOUSTON )  
 14 MARKET SUPPORT CENTER, L.P., and )  
 15 JOHN DOES 1-3, et al. )  
 16 )  
 17 Defendants. )

18  
 19 DECLARATION OF STEVEN H. GURNEE RE MOTION TO DISMISS

1 I, STEVEN H. GURNEE, hereby declare that:

2 1. I am an attorney licensed to practice in the State of California, the Northern, Eastern  
3 and Central Districts of the United States District Court and the United States Court of Appeals for  
4 the Ninth Circuit. I have personal knowledge of the facts and documents set forth in this  
5 declaration, and if called as a witness I could and would competently testify regarding them.

6 2. I have specially appeared on behalf of and represented Service Corporation  
7 International ("SCI") in several prior state and federal court actions. In each of those actions, SCI  
8 has contested personal jurisdiction of the court. In a number of cases, I filed motions to dismiss  
9 and quash service upon SCI for lack of personal jurisdiction based upon its not having the required  
10 minimum contacts.

11 3. Attached hereto as exhibits are true and correct copies of some of the courts' rulings  
12 which found insufficient grounds to assert *in personam* jurisdiction over SCI in the State of  
13 California, including: (a) *Lydia Innis v. Service Corporation International*, San Mateo County  
14 Superior Court Case No. 462609 (Exhibit "A"); (b) *Renelle K. Emond v. Service Corporation*  
15 *International*, Sacramento County Superior Court case number 04AS02627 (Exhibit "B"); and (c)  
16 *Taghulk Proprietary, Ltd. V. Service Corporation International*, U.S. District Court, Northern  
17 California District, San Francisco Division, case number 99-CV05151-WHA (Exhibit "C"). I  
18 hereby request that the court take judicial notice of each of the attached rulings pursuant to  
19 Evidence Rule 201.

20 I declare under penalty of perjury under the laws of the United States of America that the  
21 foregoing is true and correct. Executed this 27<sup>th</sup> day of March, 2008, at Roseville, California.

22  
23  
24  
25  
26  
27  
28  
STEVEN H. GURNEE

DECLARATION OF STEVEN H. GURNEE RE MOTION TO DISMISS

**EXHIBIT A**

1 STEVEN H. GURNEE, ESQ. SB# 66056  
2 DAVID M. DANIELS, ESQ. SB# 170315  
3 GURNEE & DANIELS LLP  
4 2240 Douglas Boulevard, Suite 150  
5 Roseville, California 95661-3805  
6 Telephone (916) 797-3100  
Facsimile (916) 797-3131

ENDORSED FILED  
SAN MATEO COUNTY

DEC - 5 2007

Clerk of the Superior Court  
By E. MORNEAU  
DEPUTY CLERK

5 Attorneys for Defendants  
6 SCI California Funeral Services Inc.,  
Woodlawn Memorial Park

7 SUPERIOR COURT OF CALIFORNIA  
8

9 COUNTY OF SAN MATEO

10 LYDIA INNIS, ) No. 462609  
11 Plaintiffs, )  
12 vs. ) [PROPOSED] ORDER DISMISSING  
13 SERVICE CORPORATION ) DEFENDANT SERVICE CORPORATION  
14 INTERNATIONAL, a Texas corporation ) INTERNATIONAL, A TEXAS  
15 doing business as WOODLAWN ) CORPORATION, PURSUANT TO IT'S  
16 MEMORIAL PARK, and DOES 1 through ) MOTION TO QUASH SERVICE OF  
50, inclusive, ) SUMMONS AND FIRST AMENDED  
17 Defendants. ) COMPLAINT  
18 ) Date: November 5, 2007 (cont'd to 11/16)  
 ) Time: 9:00 a.m.  
 ) Dept.: 28 LM  
 ) Complaint filed: July 27, 2007

19 On November 16, 2007, the Court issued a tentative ruling granting defendant  
20 SERVICE CORPORATION INTERNATIONAL, a Texas corporation's Motion to Quash  
21 the Service of the Summons and First Amended Complaint for Damages and dismissed  
22 SERVICE CORPORATION INTERNATIONAL, a Texas corporation, from this action.

23 No party having requested a hearing, the Court hereby adopts the tentative ruling.

24 **THEREFORE, IT IS HEREBY ORDERED** that:

25 • The Defendant's objections to evidence are each OVERRULED.  
26 • The Motion to Quash pursuant to CCP §418.10 is GRANTED. The plaintiff  
27 has not adequately demonstrated the existence of general jurisdiction.

1                     Defendant Service Corporation International is dismissed from the action.  
2                     If the tentative ruling is uncontested, the tentative ruling shall become the  
3 order of the court, pursuant to Rule 3.1308(e)(1), adopted by Local rule 3.10. Moving  
4 party shall prepare and submit an order pursuant to Rule 3.1312 and thereafter serve  
5 the signed order.

6                     IT IS SO ORDERED.

7                     DEC 9 - 2007  
8                     DATED: \_\_\_\_\_, 2007

9                     GEORGE A. MIRAM  
10                     JUDGE OF THE SUPERIOR COURT

11                     Approved as to form:

12                     Dated: Nov. 21, 2007

13                     Shelley Buchanan  
14                     Shelley Buchanan  
15                     Attorney for Plaintiff LYNDA INNIS

**EXHIBIT B**

ITEM 8 04AS02627 RENELLE K. EMOND VS. SERVICE CORP. INTERNATIONAL  
Nature of Proceeding: MOTION TO QUASH  
Filed By: MASON, JOHN A.

Defendant's motion to quash for lack of jurisdiction is granted.

SCI is the parent corporation of SCI-CAL. The subsidiary operates funeral homes in California, including those where plaintiff worked. SCI-CAL operates independently, maintains separate accounts, and pays its own taxes. Management of each funeral home is vested with the managers at the location. SCI-CAL operates independently of SCI. There is no evidence to suggest that SCI is the alter ego of SIC-CAL. SCI has no contacts with California sufficient to confer jurisdiction. (See Sells declaration.)

Plaintiff should file an amended complaint naming SCI-CAL Mount Vernon and SCI-CAL Sierra View as Doe defendants.

This minute order is effective immediately. No formal order is required, the tentative ruling being sufficient notice.



7/6/00

1 FILED

2 2000 JUL - 6 PM 3:44

3 RICHARD W. WIEKING  
4 CLERK  
U.S. DISTRICT COURT  
NO. DIST OF CA5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8  
910 TAGHULK PROPRIETARY, LTD., an  
11 Australian Limited Company, MARK  
THOMAS,

No. C 99-5151 WHA

12 Plaintiffs,  
13 v.  
14 SERVICE CORPORATION,  
15 INTERNATIONAL, INC., MATTHEWS  
16 INTERNATIONAL CORPORATION,  
ROYAL MELROSE GRANITE, INC., COLD  
SPRING GRANITE COMPANY,ORDER GRANTING DEFENDANT  
SERVICE CORPORATION  
INTERNATIONAL, INC.'S FRCP 12(b)(2)  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION AND  
DENYING DEFENDANT'S FRCP 12(b)(3)  
MOTION TO DISMISS FOR IMPROPER  
VENUE AS MOOT17 Defendants.  
18 /19  
20 INTRODUCTION  
2122 Plaintiffs bring a patent-infringement claim against all defendants and a trademark  
23 infringement claim against Service Corporation International, Inc. ("SCI"). Upon review of  
24 defendant SCI's FRCP 12(b)(2) and 12(b)(3) motions to dismiss for lack of personal jurisdiction and  
improper venue, this order holds that personal jurisdiction does not exist as to defendant SCI. The  
25 Court thereby grants defendant SCI's motion to dismiss for lack of personal jurisdiction and denies  
26 defendant's motion to dismiss for improper venue as moot.  
27

## 1 STATEMENT

2 Plaintiffs allege patent infringement arising under U.S. patent laws, trademark infringement  
3 arising under the Lanham Act, and supplemental state-law claims. Plaintiff Taghulk has been the  
4 owner of a patent for "The Everlasting Urn," a receptacle for ashes of the deceased, issued originally  
5 in September 1992. Defendant SCI contends that personal jurisdiction is lacking and that venue is  
6 improper.

7 SCI advertises itself as the world's largest consolidator of funeral homes and cemeteries. SCI  
8 is a publicly-held Texas corporation headquartered in Houston. SCI is not licensed by the California  
9 Cemetery Board, nor is it licensed by the California Board of Funeral Directors. SCI is not  
10 authorized to do business in California. On the other hand, SCI California Funeral Services ("SCI-  
11 Cal"), a California-based subsidiary of SCI, is headquartered in North Hollywood, California. Each  
12 of SCI's subsidiaries are in a given region and SCI-Cal occupies the Pacific Region, including much  
13 of California. SCI-Cal, among many other subsidiaries, is wholly owned by SCI.

14 The other defendants in this action are Matthews International Corporation, headquartered in  
15 Pennsylvania, Royal Melrose Granite, Inc., headquartered in Minnesota, and Cold Spring Granite  
16 Company, also headquartered in Minnesota. These defendants have not joined in SCI's motions to  
17 dismiss.

18 Beginning in 1993, Taghulk contacted SCI of Australia, a subsidiary of SCI, regarding a  
19 proposal to supply an urn-memorial product covered by the patent. Representatives of Taghulk  
20 visited SCI facilities in Houston, Texas, and communicated with SCI of Australia during the  
21 negotiation process. In 1994, SCI-Cal purchased five Everlasting Urns and accessories. Despite  
22 initial mutual interest, negotiations broke down and SCI and its affiliates decided not to purchase any  
23 more Everlasting Urns.

24 The dispute arose after Plaintiff Thomas observed cremation receptacles at funeral facilities in  
25 San Jose, California, in 1999 which he alleges bore a striking resemblance to the Everlasting Urn.  
26 SCI-Cal is the subsidiary occupying the Pacific Region, where the facilities in California are located.

27

28

1 ANALYSIS  
23 A. Burden of Proof  
4

5 The party seeking to invoke the jurisdiction of the reviewing court has the burden of  
6 establishing the existence of jurisdiction. *See KVOS, Inc. v. Associated Press*, 299 U.S. 269, 278  
7 (1936). If the court determines that it will receive only affidavits, or affidavits plus discovery  
8 materials, the plaintiff must only make a *prima facie* showing of jurisdictional facts in order to avoid  
9 the defendant's motion to dismiss. *See Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280,  
10 1285 (9th Cir. 1977). Plaintiffs were allowed discovery and must therefore make a *prima facie*  
11 showing of jurisdictional facts. If plaintiffs are able to make such a showing, it does not necessarily  
12 mean that they may then go to trial on the merits. *Ibid.* "[A]t any time when the plaintiff avoids a  
13 preliminary motion to dismiss by making a *prima facie* showing of jurisdictional facts, he must still  
14 prove the jurisdictional facts at trial by a preponderance of the evidence." *Id.* at 1285 n.2.

15 B. Due Process and Personal Jurisdiction  
16

17 In order to establish the existence of personal jurisdiction in a diversity-of-citizenship case, the  
18 plaintiff must show that the long-arm statute of the forum state allows jurisdiction and that the  
19 exercise of jurisdiction accords with federal constitutional principles of due process. *See Haisten v.*  
20 *Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986). California's  
21 long-arm statute allows jurisdiction coextensive with the outer limits of due process under the federal  
22 constitution, as defined by the Supreme Court. *See Cal. Code Civ. Pro* § 410.10; *Data Disc*, 557  
23 F.2d at 1286.

24 Absent one of the traditional bases for jurisdiction, consent, domicile or presence, due process  
25 requires that the defendant have established minimum contacts with the forum state. *See*  
26 *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). The court may exercise general  
27 jurisdiction over the defendant for causes of action unrelated to its forum-related activities if the  
28 defendant's activities in the forum are so substantial or systematic and continuous that it may be said  
to be present in the forum. *See Data Disc*, 557 F.2d at 1287. If the defendant's forum-related  
activities are not sufficiently pervasive to confer general jurisdiction, the court may still maintain

1 specific jurisdiction for a cause of action that arises out of the defendant's forum-related activities.

2 **C. Jurisdiction**

3 Defendant SCI is located in Texas and has no operations in California except through its  
4 California subsidiary. The presence in California of a subsidiary is insufficient to confer personal  
5 jurisdiction over the parent. "Congress has not provided that a corporation of one state shall be  
6 amenable to suit in the federal court for another state in which the plaintiff resides, whenever it  
7 [employs] a subsidiary corporation as the instrumentality for doing business therein." *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336 (1925). An exception arises, however, if the parent  
9 and the subsidiary are alter egos, one of the other. *See American Tel & Tel. Co. v. Companie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996).

10  
11 Despite discovery, plaintiffs have failed to make out a prima facie case of alter ego. Plaintiffs  
12 have shown considerable control by the parent but have not shown that failure to disregard the  
13 separate identities of parent and subsidiary would result in fraud or injustice.<sup>1</sup> *See American Tel. & Tel.*, 94 F.3d at 591.

14  
15 Otherwise, SCI has had only two contacts with California. The first is its website which can  
16 be read to indicate that it does business world-wide, including in California, but, read as a whole, the  
17 website acknowledges the operation of subsidiaries. The second is a collection action in California  
18 state court by a California subsidiary but mistakenly brought in the name of the parent. That was not  
19 a "purposeful availment" sufficient to subject SCI to unrelated lawsuits thereafter. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). General jurisdiction simply has not been shown.

20  
21 Finally, specific jurisdiction is missing because none of the acts complained of involving SCI  
22 took place in California and the alleged infringement -- which did take place in California -- was not  
23 attributable to SCI, at least on the record tendered. Rather, it was the work of the California  
24 subsidiary.

25  
26 <sup>1</sup>*Intermountain Ford Tractor Sales Co. v. Massey-Ferguson, Ltd.*, 210 F. Supp. 930 (D. Utah 1962), cited by  
27 plaintiffs, is distinguishable. There, an injustice would have flowed from a refusal to treat the two companies as one  
because the parent was a foreign company that controlled all U.S. subsidiary operations and would have been beyond the  
jurisdiction of the antitrust laws had the veil gone unpierced.

1 CONCLUSION  
2

3 Accordingly, the motion to dismiss Service Corporation International, Inc. is GRANTED for  
4 lack of personal jurisdiction. The motion to dismiss for improper venue is DENIED as moot.  
5 Plaintiffs have until July 31, 2000 to file and to serve any amendment to add the California subsidiary  
6 as a defendant.

7

8 IT IS SO ORDERED.

9

10 Dated: July 6, 2000



11  
12 WILLIAM ALSUP  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

dt

United States District Court  
for the  
Northern District of California  
July 6, 2000

\* \* CERTIFICATE OF SERVICE \* \*

Case Number: 3:99-cv-05151

Taghulk Proprietary

vs

Service Corporation

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 6, 2000, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roger A. Dreyer, Esq.  
Dreyer Babich Buccola & Callaham  
715 University Ave  
Sacramento, CA 95814

Stephen F. Davids, Esq.  
Dreyer Babich Buccola & Callaham  
715 University Ave  
Sacramento, CA 95814

John P. Costello, Esq.  
Law Offices of John P. Costello  
331 J Street  
Sacramento, CA 95814

Steven H. Gurnee, Esq.  
Steven H. Gurnee & Associates  
2240 Douglas Boulevard, Suite 150  
Roseville, CA 95661

Michael E. Breeden, Esq.  
Steven H. Gurnee & Associates  
2240 Douglas Boulevard, Suite 150  
Roseville, CA 95661

Robert B. Pringle Esq.  
Thelen Reid & Priest LLP  
101 Second St  
Ste 1800  
San Francisco, CA 94105-3601

Jonathan E. Swartz, Esq.  
Thelen Reid & Priest LLP  
101 Second St  
Ste 1800  
San Francisco, CA 94105-3601

Barry J. Coyne, Esq.  
Reed Smith Shaw & McClay LLP  
James H. Reed Bldg, Mellon Square  
435 Sixth Avenue  
P.O. Box 2009  
Pittsburgh, PA 15219

Joshua S. Bish, Esq.  
Reed Smith Shaw & McClay LLP  
James H. Reed Bldg, Mellon Square  
435 Sixth Avenue  
P.O. Box 2009  
Pittsburgh, PA 15219

Douglas E. Cameron, Esq.  
Reed Smith Shaw & McClay LLP  
James H. Reed Bldg, Mellon Square  
435 Sixth Avenue  
P.O. Box 2009  
Pittsburgh, PA 15219

Dennis E. Raglin, Esq.  
Drath Clifford Murphy Wennerholm & Hagen  
1999 Harrison St  
Ste 1900  
Oakland, CA 94612

John M. Drath, Esq.  
Drath Clifford Murphy Wennerholm & Hagen  
1999 Harrison St  
Ste 1900  
Oakland, CA 94612

Richard W. Wiekking, Clerk

DAWN K. TOLAND  
BY: \_\_\_\_\_  
Deputy Clerk